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File No. 9035.0003

October 17, 2023

VIA E-MAIL & ECF

The Honorable Douglas Arpert
United States Magistrate Judge
United States District Court – District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Courtroom 6W
Trenton, NJ 08608
dea_orders@njd.uscourts.gov

RE: Davis v. Six Flags Great Adventure, LLC, et al
Civil Action No.: 3:21-cv-14650

Dear Judge Arpert:

Please accept this letter as a joint submission on behalf of Defendants Six Flags Great Adventure, LLC (“SFGA”) and S&S Worldwide, Inc. (“S&S”). This letter is being filed in response to Plaintiff’s October 16, 2023 letter to the Court (Dkt. 67), whereby Plaintiff requested an immediate Conference with Your Honor due to “the parties” being “unable to comply with” the discovery deadlines set by the Court.

While Defendants do not oppose Plaintiff’s request for a Conference, we feel it necessary to provide Your Honor with some context and relevant factual information concerning discovery. As set forth in more detail below, Defendants submit that any inability of the parties to comply with Your Honor’s deadlines has been exclusively caused by Plaintiff’s longstanding unwillingness to prioritize depositions and habitual disregard for both deadlines and required filing submissions set by this Court. With that said, if Your Honor elects to hold a Conference in this case, Defendants jointly request that Your Honor consider imposing warnings and/or sanctions against Plaintiff’s counsel.

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Depositions of Lester Davis and Kyla Davis

Initially, as outlined within the undersigned's prior submission to the Court dated July 27, 2023 (Dkt. 59), Plaintiff's counsel has a well-documented history of adjourning the depositions of Lester and Kyla Davis noticed weeks in advance and on days mutually agreed upon by all counsel. In fact, Plaintiff's counsel had unilaterally adjourned prior depositions of these individuals on multiple prior occasions dating back to May 2023.

Due to counsel's history of adjourning depositions, Your Honor compelled Lester and Kyla Davis' depositions for August 25, 2023. However, due to the complexity of Lester Davis' deposition, the parties only partially completed Lester Davis' deposition on that date and could not move forward with Kyla's deposition. On September 12, 2023 (Dkt. 65), Your Honor granted additional questioning of Lester Davis and entered an Order specifically stating:

*"Defendant SFGA shall have an additional 2 hours and Defendant S&S shall have 30 minutes to complete the deposition of plaintiff. Defendants may also separately conduct the deposition of Plaintiff's wife. **Plaintiff's counsel must cooperate with defense counsel to schedule these depositions which must be completed by 10/20/2023. All fact discovery must be completed by 11/30/2023.**"*

Immediately following the entry of Your Honor's September 12, 2023 Order (Dkt. 65), Defendants reached out to Plaintiff's counsel to secure agreeable deposition dates in advance of October 20, 2023. On September 13, 2023, SFGA counsel provided Plaintiff with twelve (12) different days of availability for the depositions to be completed before the October 20, 2023 deadline. Thereafter, on September 13, 2023, Plaintiff's counsel selected one proposed day and explicitly noted "*Lester Davis and Kyla Davis are available for depositions on October 18th after 9:30 am.*" On or about September 13, 2023, after the date of October 18, 2023 was mutually agreed upon by all counsel, the depositions of Lester Davis and Kyla Davis were duly noticed for October 18, 2023.

On October 16, 2023, we were informed for the first time by Plaintiff's counsel "We aren't available October 18th for the deposition of Lester and Kyla Davis". Despite Defendant's proposal for the depositions to be held on October 19th to ensure the parties meet Your Honor's deadline, a date in which Plaintiff's counsel advised they were still available, Plaintiff's counsel rejected this proposal and instead elected to write to Your Honor to request a Conference.

Significantly, it has already been confirmed and established that Lester Davis and Kyla Davis are not employed in any capacity.

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Deposition of SFGA Corporate Designee

By Order dated July 24, 2023 (Dkt. 58), and partially due to **“Plaintiff’s failure (again) to timely comply with the Court’s directive for his submission”**, Your Honor ruled on limitations to be imposed on Plaintiff’s Rule 30(b)(6) deposition notice to SFGA. Thereafter, on or about September 13, 2023 and at the same time the October 18th depositions of Kyla/Lester Davis were agreed upon, all parties mutually agreed that the SFGA corporate designee deposition would move forward at 10:00 AM on October 10, 2023.

On October 9, 2023, the day before the SFGA deposition was scheduled to begin, Plaintiff’s counsel for the first time requested that the start time be adjourned from 10:00 AM to 12:00 PM. Defendants and the witness remained flexible and were amenable to Plaintiff’s request, yet counsel was informed of family obligations on the part of SFGA counsel which would require the deposition to be completed by 5:00 PM. Specifically, the timing conflict involved a pregnant family member’s medical appointment and the resulting need to provide child-care to a toddler starting at 5:00 PM on October 10th.

At 9:17 AM on October 10, 2023, within hours of when SFGA’s corporate designee deposition was scheduled to begin, Plaintiff’s counsel advised “*I apologize for the inconvenience this may cause, but unfortunately Attorney Alaina would like to cancel the deposition today due to a conference in another case taking longer than expected.*” When counsel for SFGA vehemently objected to the cancellation, Plaintiff’s counsel advised that the deposition could move forward at 2:00 PM but that counsel *“will go as far into the evening as I have to go.”* Of course, due to the personal conflict set to begin at 5:00 PM counsel was already advised of the day prior, SFGA counsel was not agreeable to Plaintiff’s sporadic proposal.

Counsel for SFGA and S&S, along with the SFGA designated representative, all appeared in the Zoom deposition room at 12:00 PM on October 10, 2023. A court reporter and videographer were also present. After waiting in the room for approximately five (5) minutes, it was determined that Plaintiff’s counsel was not going to appear and all participants therefore left the room.

The following facts are also worth bringing to Your Honor’s attention:

- While Your Honor imposed limitations on Plaintiff’s original Rule 30(b)(6) notice by way of Order dated July 24, 2023 (Dkt. 58), **Plaintiff’s counsel did not provide a compliant updated notice for the witness to review until approximately 7:00 AM on October 10, 2023 (within hours of when the deposition was scheduled to begin).** A deposition notice previously delivered by counsel on October 6, 2023 was completely non-compliant with Your Honor’s rulings and was therefore objected to swiftly by SFGA counsel.

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- For weeks in advance of the October 10, 2023 deposition, the corporate designee for SFGA arranged his schedule to make himself available and prepared himself to testify on a broad range of topics contained within Plaintiff's notice that at one point exceeded fifty (50) different listed topics. **These arrangements and preparations were made during SFGA's busiest time of the year, known as "Fright Fest." Ultimately, Plaintiff's complete and utter disregard for the witnesses' time during SFGA's busiest time of the year should not go unpenalized.**

Deposition of S&S Corporate Designee

The parties have agreed to the S&S corporate designee depositions being completed on November 29, 2023. On the morning of October 17, 2023, Plaintiff's counsel delivered corporate designee deposition notices to conduct two separate S&S depositions at 12:00 PM and 3:00 PM.

Deposition of SFGA Employee Kyle Groover

On or about September 13, 2023, it was agreed upon by all parties that the deposition of SFGA fact witness Kyle Groover would move forward on October 19, 2023. However, due to Plaintiff's intentional delay of Plaintiff Lester and Kyla Davis' deposition and refusal to produce said individuals in advance of the October 20, 2023 Court deadline, as well as Plaintiff's sporadic last minute cancellation of the SFGA designee deposition on the morning of October 10, 2023, SFGA counsel adjourned the deposition of Kyle Groover. It is worth noting that, per Your Honor's September 12, 2023 Order (Dkt. 65), Mr. Groover's deposition and all defendant depositions are to be completed by the fact discovery end date of November 30, 2023.

At this point, based upon the concerning history outlined above, defense counsel does not feel comfortable having any additional witnesses preparing for depositions in this case until Your Honor has reviewed the matter. Defense counsel has been left with no confidence that any depositions noticed by Plaintiff's counsel will actually move forward and fears further deposition adjournments will continue to occur as late as the morning of the day in which the witness has prepared himself to appear.

Notably, while Plaintiff's counsel has expressed her availability and desire to move forward with Mr. Groover's deposition on October 19, 2023, counsel has rejected a proposal to instead have Lester and Kyla Davis' deposition completed on this date. Thus, although counsel is well aware of Your Honor's September 12, 2023 Order (Dkt. 65) requiring the depositions of Lester and Kyla to be completed by October 20, 2023, counsel has intentionally elected to completely disregard Your Honor's October 20, 2023 deadline for Lester/Kyla Davis depositions while she instead pursues a different deposition not due until November 30, 2023 which she prefers to be completed in its place.

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Expert Discovery

There have been as many as three (3) prior Court Orders entered setting forth deadlines for Plaintiff's disclosure of experts. Most recently, a July 25, 2022 Order (Dkt. 33) required Plaintiff's experts be disclosed by January 30, 2023 and a February 2, 2023 Order (Dkt. 39) required Plaintiff's experts to be disclosed by May 29, 2023.

Despite the above, Plaintiff has yet to disclose any experts in this case. Currently, Defendants have no information whatsoever related to what type of experts Plaintiff will retain and/or what category of experts will be required to protect the defense interests. As such, Plaintiff's continued refusal to disclose experts in accordance with the deadlines set by this Court has also delayed the Defendants ability to complete expert discovery tasks in this case.

Additional HIPAA Authorizations

During the of the partial completion of Lester Davis' deposition on August 25, 2023, Defendants identified nine (9) additional treating medical providers. The new providers identified were Penn Sleep Center, Pentec Health, Magee Rehabilitation/Guy Fried, M.D., Magee Rehabilitation Riverfront, Children's Seashore Housse, HUP Endoscopy/Rotonya McCants Carr, M.D., Health on South Rx, Moss Rehabilitation and Shriners Hospital.

By letters dated September 27 and October 9, 2023, Defendants requested that Plaintiff provide signed Authorizations required for the Defendants to secure records from these providers. However, to date, Plaintiff has still yet to provide executed Authorizations for any of the additional providers identified.

Miscellaneous

Based upon the substance of Plaintiff Lester Davis' partial deposition on August 25, 2023, Defendants have already identified a series of additional discovery documents and information required to fully evaluate Plaintiff's damages claims. Defendants are in the process of serving Plaintiff's counsel with supplemental demands in this regard, and expect that even more demands will be needed whenever Plaintiff's counsel finally allows Lester Davis' deposition testimony to be completed.

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Thank you for your attention to this submission and we look forward to discussing these issues at the time of any Conference to be set by Your Honor.

Respectfully,

/s/ Christopher A. Gulla

CHRISTOPHER A. GULLA

CAG/ca

cc: Aliana Gregorio, Esquire
Ryan Erdreich, Esquire